

## Remarks

Claims 40-43 are pending in the application.

Claims 40-43 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-4 in U.S. Patent No. 6,344,399. Submitted herewith is applicant's terminal disclaimer obviating such rejection.


Claims 40-43 further stand rejected under 35 U.S.C. 102(b) as being anticipated by Noble ('835). Applicant respectfully submits that the '835 reference cannot constitute prior art in this case.

U.S. Patent 6,004,835 to Noble issued December 21, 1999 from U.S. Application Serial Number 08/046,110 filed April 25, 1997. The present application claims priority to this very same application (Serial No. 08/046,110) as evidenced by the claim for priority made by Preliminary Amendment filed simultaneously with the present application. As such, the '835 reference cannot be considered prior art for at least the reason that it was not filed prior to the earliest claimed priority date of the present application. Therefore, Applicant requests removal of the 102(b) rejection in the Examiner's next action.

For the reasons discussed above, pending claims 40-43 are in condition for immediate allowance. Accordingly, formal allowance of such pending claims is respectfully requested.

Respectfully submitted,

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